

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
UNILATERAL ADMINISTRATIVE ORDER
FOR RD/RA

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region IV

In The Matter Of:
HELENA CHEMICAL COMPANY

Helena Chemical Company
6075 Poplar Avenue
Memphis Tennessee

)
)
) Proceeding Under Section
) 106(a) of the Comprehensive
) Environmental Response,
) Compensation, and Liability
) Act of 1980, as amended by
) the Superfund Amendments and
) Reauthorization Act of 1986
) 42 U.S.C. Section 9606 (a)
)
) U.S. EPA Docket No.
)

UNILATERAL ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

This Unilateral Administrative Order For Remedial Design and Remedial Action (the "Order") directs Respondent to develop the Remedial Design ("RD") for the remedy described in the Record of Decision dated September 8, 1993 for the Helena Chemical Company site, and to implement the Remedial Design by performing the Remedial Action ("RA"), Operation and Maintenance, and Performance Monitoring. This Order is issued to Respondent by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further

delegated to EPA Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-B and redelegated to the Director, Waste Management Division on January 5, 1989, by Regional Delegation No. 8-14-A.

II. PARTIES BOUND

A. This Order applies to and shall be binding upon Respondent, its directors, officers, employees, agents, successors, and assigns. Respondent is responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of any Respondent shall alter the Respondent's responsibilities under this Order.

B. Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's property rights, stock, or assets are transferred. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to perform any Work under this Order within five days after the effective date of this Order, or on the date such services are retained, whichever date occurs later. Respondent shall also provide a copy of this Order to each person representing Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Notwithstanding the terms of any contract, Respondent is responsible for ensuring that its contractors, subcontractors and agents perform the Work contemplated herein in accordance with this Order.

C. With regard to the activities undertaken pursuant to this Order, each contractor, subcontractor and agent shall be deemed to be related by contract to the Respondent within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

D. Each Respondent that now or hereafter owns property at the Site shall, within 15 days after the effective date of this Order or within 15 days after acquiring title to such property, record a copy or copies of this Order in the appropriate office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this Order is indexed to the titles of each and every property at the Site owned by any Respondent so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondent shall, within 15 days after the effective date of this Order or within 15 days after acquiring title to such property, send notice of such recording and indexing to EPA.

E. Not later than 60 days prior to any transfer of any real property interest in any property included within the Site, Respondent shall submit a true and correct copy of any transfer documents to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

III. DEFINITIONS

Unless noted to the contrary, the terms of this Order shall have the meanings assigned to those terms pursuant to CERCLA or any regulation promulgated under CERCLA. Whenever the terms listed below are used in this Order and Appendices attached hereto, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

B. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the end of the next working day.

C. "EPA" shall mean the United States Environmental Protection Agency.

D. "Hazardous Substance" shall mean any substance meeting the definition provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

E. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

F. "Operation and Maintenance" or "O&M" shall mean all operation and maintenance activities required by the ROD, the Scope of Work, and the Final Operation and Maintenance Plan developed by Respondent and approved by EPA pursuant to this Order, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

G. "Paragraph" shall mean a portion of this Order identified by a capital letter.

H. "Parties" shall mean the United States of America and Respondent.

I. "Performance Monitoring" shall mean all performance monitoring activities required by the ROD, the Scope of Work, and the Performance Standards Verification Plan developed by Respondent and approved by EPA, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions), to ensure the effectiveness of the implemented remedy and to confirm over time that all Performance Standards are met.

J. "Performance Standards" shall mean those cleanup levels, treatment standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ROD and the Scope of Work, and, except for cleanup levels and treatment standards, those identified by EPA during the Remedial Design that the Remedial Action and all other Work required by this Order must attain and maintain.

~~Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).~~
K. "Pollutant or Contaminant" shall mean any substance defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

L. "Record of Decision" or "ROD" shall mean the EPA Record of Decision for the Site which was signed on September 8, 1993, by the Regional Administrator, EPA Region IV, including all attachments thereto. The ROD is attached hereto as Appendix 1 and is incorporated herein by reference.

M. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondent to implement the final plans and specifications submitted by Respondent pursuant to the Remedial Design Work Plan approved by EPA, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

N. "Remedial Design" or "RD" shall mean all studies, investigations or surveys conducted, and plans and specifications prepared, that are necessary to implement the Remedial Action, Operation and Maintenance, and Performance Monitoring activities required by the ROD, the Scope of Work, and the Remedial Design Work Plan developed by Respondent and approved by EPA pursuant to this Order, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

O. "Respondent" shall mean Helena Chemical Company.

P. "Section" shall mean a portion of this Order identified by a Roman numeral.

Q. "Site" shall mean the Helena Chemical Company Superfund Site located approximately one mile south of Fairfax, Allendale County, South Carolina, as generally depicted on the map attached hereto as Appendix 3. Notwithstanding the boundaries depicted on Appendix 3, the Site includes all areas to which hazardous substances released at this parcel have migrated and all areas in

close proximity to the contamination that are necessary for implementation of the Work.

R. "State" shall mean the State of South Carolina and the South Carolina Department of Health and Environmental Control.

S. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring at the Site. The SOW is attached hereto as Appendix 2 and is incorporated herein by reference.

T. "United States" shall mean the United States of America, including the Department of Justice and EPA.

U. "Work" shall mean all activities Respondent is required to perform under this Order, including Remedial Design, Remedial Action, Operation and Maintenance, Performance Monitoring, and any schedules or plans required to be submitted pursuant thereto.

IV. FINDINGS OF FACT

A. The Site is a tract of approximately 13.5 acres located on Highway 321 South, approximately one mile south of Fairfax, South Carolina (Pop. 2247) in Allendale County and consists primarily of property owned by Helena. The Site is currently used as a distribution center for prepackaged pesticides, but was formerly used for formulating and distributing liquid and dry agricultural insecticides. Pesticides, chlorinated solvents and other contaminants have been found in on-Site soils and in the ground water beneath the Site. Pesticides and other contaminants have also been found in on-Site surface waters and in a wooded wetland area north of the landfill. A more detailed description

of the Site and its current and past uses is set forth in the ROD and in the Feasibility Study for the Site.

B. Respondent is now, and has been since on or about November 30, 1970, the owner and operator of the Site.

C. On February 21, 1990 (55 Fed. Reg. 6161), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

D. In response to a release or substantial threat of release of hazardous substances at or from the Site, Respondent commenced in May 1989 a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. § 300.430.

E. The Remedial Investigation ("RI") Report was completed in April 1992, and the Feasibility Study ("FS") Report was completed in December 1992.

F. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on May 18, 1993, in a major local newspaper of general circulation and provided opportunity for public comment on the proposed remedial action.

G. The decision by EPA on the remedial action to be implemented at the Site is embodied in a Record of Decision ("ROD"), executed on September 8, 1993, on which the State had a reasonable opportunity to review and comment. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the

response action. The administrative record is available for public review at EPA's regional office in Atlanta, Georgia and at the public repository located at the Fairfax City Hall in Fairfax, South Carolina.

H. Numerous hazardous substances were identified during the RI. Soils were found to contain significant concentrations of DDT, DDE, DDD, BHC, toxaphene, dieldrin, benzene, lead and chromium, among others. Many of these compounds, and a variety of other hazardous substances, were also detected in ground water. The ROD contains a detailed discussion of contaminants of concern for the baseline risk assessment and other hazardous substances detected at the Site.

I. Releases of hazardous substances at the Site were first confirmed as a result of sampling conducted in a November 1980 investigation of the Site conducted by South Carolina Department Health and Environmental Control (SCDHEC). Subsequent sampling by Respondent pursuant to a consent order with SCDHEC confirmed that soils and surface water were contaminated by pesticides from Site operations.

J. Site contaminants have migrated from the soil and surface water into a hardwood wetland area adjacent to the Site and in drainage pathways leading from the wetland area. Migration of contaminants in the ground water poses a potential threat to a municipal drinking water well for the City of Fairfax, which is located near the Site and also poses an unacceptable risk to biological receptors of the contaminants.

K. Under current land uses it is also possible that workers on Site will be exposed to Site contaminants through dermal

contact and incidental ingestion of contaminated soil. Potential future residents of the Site may be harmed by Site contaminants through dermal exposure or ingestion of soil, and by exposure to contaminated drinking water from private wells. A more detailed discussion of possible exposure routes is found in the ROD.

K. The remedy chosen for the Site includes three major components: (1) extraction and treatment of contaminated ground water by means of pumping wells, with discharge to the local sanitary sewer system; (2) excavation and treatment, by hydrolytic/photolytic dechlorination, of all contaminated soils which contain greater than 50 parts per million (ppm) total pesticides; and (3) mitigation of adverse biological impacts to adjacent wetlands and surface waters resulting from Site-specific contamination. A more complete description of the selected remedy may be found in the Record of Decision dated September 8, 1993.

L. Potential exposure to contaminated ground water will be addressed by the extraction, treatment and discharge of ground waters underlying the Site. Exposure to contaminated soils by current Site workers and trespassers and by future on-Site residents will be addressed by the excavation and treatment of contaminated soils in excess of 50 ppm total pesticides. Adverse impacts to non-human biological receptors resulting from the contamination of sediments and surface waters on and adjacent to the Site will be addressed by mitigation of those impacts in accordance with the requirements of the Clean Water Act.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

A. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. Respondent is a "liable party" as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

D. The contaminants found at the Site are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

E. These hazardous substances have been released at and from the Site into the soil, sediment, ground water, and surface water.

F. The disposal and migration of hazardous substances at and from the Site are a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

G. The potential for future migration of hazardous substances at and from the Site poses a threat of a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

H. The release of one or more hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

I. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

VI. NOTICE TO THE STATE

On May 15, 1994, prior to issuing this Order, EPA notified SCDHEC that EPA would be issuing this Order.

VII. ORDER

Based on the foregoing, Respondent is hereby ordered to comply with this Order, including but not limited to all Appendices to this Order, all documents incorporated by reference into or to be developed pursuant to this Order, and all schedules and deadlines in this Order, attached to this Order, incorporated by reference into this Order, or to be developed pursuant to this Order.

VIII. WORK TO BE PERFORMED

A. Appendix 2 to this Order is the SOW, which sets forth the major tasks that must be completed by Respondent to implement the Work at the Site. The SOW is incorporated into this Order by reference as if fully set forth herein and is therefore both a requirement and an enforceable part of this Order.

B. Respondent shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondent shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

C. All aspects of the Work to be performed by Respondent pursuant to this Order shall be under the direction and supervision of a qualified contractor ("Supervising Contractor"), who shall be a qualified professional engineer or geologist with

expertise in hazardous waste cleanups, the selection of which shall be subject to disapproval by EPA. Within ten days after the effective date of this Order, Respondent shall submit to EPA in writing the name, title, and qualifications of any contractor proposed to be the Supervising Contractor, including primary support entities and staff. EPA will issue a notice of disapproval or an authorization to proceed.

D. If EPA disapproves a proposed Supervising Contractor, Respondent shall submit to EPA within 15 calendar days after receipt of EPA's disapproval of the Supervising Contractor previously proposed, a list of contractors, including primary support entities and staff, that would be acceptable to Respondent. EPA shall, after receipt of the list, provide written notice of the names of the contractors it disapproves and an authorization to proceed with respect to any of the other contractors. Respondent may select any contractor from that list that is not disapproved and shall notify EPA of the name of the Supervising Contractor selected within ten days of EPA's authorization to proceed.

E. If at any time thereafter, Respondent proposes to use a different Supervising Contractor for Work at the Site, Respondent shall notify EPA and shall obtain an authorization to proceed from EPA before a new Supervising Contractor performs any Work under this Order. Any change in the Supervising Contractor made pursuant to this paragraph shall not excuse any Work, deadlines, or schedules required under this Order.

F. The purpose of the Remedial Design/Remedial Action is to design, construct, operate and maintain, and monitor the performance of the selected remedy to ensure protection of human health and the environment. The Remedial Design (discussed in Paragraph G, below) includes those activities to be undertaken by Respondent to develop the final plans and specifications, general provisions, and special requirements necessary to translate the ROD into the remedy to be constructed during the Remedial Action phase (discussed in more detail in Paragraph H, below). The Remedial Action involves the implementation phase of Site cleanup or actual construction of the remedy. The Remedial Action is based on the Remedial Design to achieve the Performance Standards at the Site. The major tasks that Respondent must complete and the deliverables associated with each task to support the Work are described in the SOW. EPA approval of a task or deliverable shall not be construed as a guarantee of the ultimate adequacy of such a task or deliverable.

G. Remedial Design -

1. Within 30 days after EPA's issuance of an authorization to proceed pursuant to Paragraph C or D above, Respondent shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan, and the other deliverables submitted pursuant to or in conjunction with the Remedial Design Work Plan, shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon their approval by EPA, shall be incorporated into and become

enforceable under this Order. Within 30 days after EPA's issuance of an authorization to proceed, Respondent shall also submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

2. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, and shall be developed in conjunction with other deliverables identified in the SOW, including, but not limited to, the following items: (1) a Sampling and Analysis Plan (including, but not limited to, a Quality Assurance Project Plan (QAPP) in accordance with Section XV (Quality Assurance, Sampling and Data Analysis)); (2) a Treatability Study Work Plan; (3) a preliminary design submittal; and (4) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

3. Upon approval of the Remedial Design Work Plan and the Sampling and Analysis Plan, and the Treatability Study Work Plan, by EPA, after a reasonable opportunity for review and comment by the State, and submittal to EPA and the State of the Health and Safety Plan for all field activities, Respondent shall implement the Remedial Design Work Plan. Respondent shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved

schedule for review and approval pursuant to Section XIII (EPA Review of Submissions). Unless otherwise directed by EPA, Respondent shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan and the Sampling and Analysis Plan.

4. The preliminary design submittal shall include, at a minimum, the following: (1) results of data acquisition activities; (2) design criteria report; (3) a draft design analysis; (4) draft plans and specifications; (5) a draft construction schedule; (6) a plan for satisfying permitting requirements; and (7) a treatability study final report.

5. The pre-final/final design submittal shall include, at a minimum, the following: (1) complete design analyses; (2) final plans and specifications; (3) final construction schedule; (4) a construction cost estimate; and (5) an Operation and Maintenance Plan.

H. Remedial Action -

1. Concurrent with the submittal of the pre-final/final design, Respondent shall submit to EPA and the State a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan and the other deliverables submitted pursuant to or in conjunction with the Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal and, upon their approval by EPA, shall be incorporated into and become enforceable under this Order. At

the same time as they submit the Remedial Action Work Plan, Respondent shall submit to EPA and the State a Construction Health and Safety Plan/Contingency Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

2. The Remedial Action Work Plan shall include plans and schedules for implementation of all remedial action tasks identified in the SOW, and shall be developed in conjunction with other deliverables identified in the SOW, including, but not limited to, the following items: (1) a schedule for completion of the Remedial Action; (2) a schedule for developing and submitting other required Remedial Action plans; (3) a Project Delivery Strategy; (4) a Construction Management Plan; and (5) a Construction Quality Assurance Plan.

3. Upon approval by EPA of the Remedial Action Work Plan, and the other deliverables to be developed in conjunction with the Remedial Action Work Plan as set forth in the SOW, after a reasonable opportunity for review and comment by the State, Respondent shall implement the activities required under the Remedial Action Work Plan. Respondent shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIII (EPA Review of Submissions). Unless otherwise directed by EPA, Respondent shall not commence physical on-site activities at the Site prior to approval of the Remedial Action Work Plan and

such other deliverables to be developed in conjunction with the Remedial Action Work Plan as set forth in the SOW.

4. Within ten days after EPA approves the RA Work Plan, Respondent shall notify EPA in writing of the name, title, and qualifications of the construction contractor proposed to be used in carrying out the Work under this Order. If at any time Respondent proposes to change the construction contractor, Respondent shall notify EPA immediately and shall obtain approval from EPA, as provided in this paragraph, before the new construction contractor performs any of the Work under this Order. If EPA disapproves of the selection of any contractor as the construction contractor, Respondent shall submit a list of contractors that would be acceptable to Respondent to EPA within 15 days after receipt of EPA's disapproval of the contractor previously selected. EPA will thereafter provide written notice of the names of the contractors it approves, if any. Respondent may select any approved contractor from that notice and shall notify EPA of the name of the contractor selected within ten days of EPA's designation of approved contractors.

I. Operation and Maintenance and Performance Monitoring -
The Operation and Maintenance Plan shall be developed and submitted to EPA for review and approval in accordance with the SOW. Respondent shall also develop and submit the Performance Standards Verification Plan to EPA for review and approval in accordance with the SOW. Upon approval by EPA, Respondent shall implement the Operation and Maintenance Plan and the Performance Standards Verification Plan.

J. Performance Standards - The Work performed by Respondent pursuant to this Order shall, at a minimum, achieve the Performance Standards.

K. Warranties - Notwithstanding any action by EPA, Respondent shall be fully responsible for achievement of the Performance Standards. Nothing in this Order, or in EPA's approval of the Remedial Design or Remedial Action Work Plans, or approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will achieve the Performance Standards. Respondent's compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable Performance Standards.

L. Notification of Off-Site Waste Shipment - All materials removed from the Site shall be disposed of or treated at a facility approved by the EPA Project Coordinator and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. 9621(d)(3), with the U.S. EPA "Off-Site Policy," 40 CFR § 300.440 (50 Fed. Reg. 49200, September 22, 1993), and with all other applicable Federal, State and local requirements. Respondent shall, prior to any off-Site shipment of hazardous substances from the Site to an off-Site waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to the EPA Project Coordinator, of such shipment of hazardous substances. However, the notification of shipments shall not apply to any off-Site

shipments when the total volume of all shipments from the Site to the State will not exceed 10 cubic yards.

1. The notification shall be in writing, and shall include the following information, where available: (a) the name and location of the facility to which the hazardous substances are to be shipped; (b) the type and quantity of the hazardous substances to be shipped; (c) the expected schedule for the shipment of the hazardous substances; and (d) the method of transportation.

Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

2. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for Remedial Action construction. Respondent shall provide all relevant information on the off-site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

3. The contents of this provision shall not be considered to be approval of the off-Site shipment of materials from the Site

where the ROD requires treatment and/or storage on Site.

IX. CERTIFICATION OF COMPLETION

A. Within 30 days after Respondent concludes that the Remedial Action has been fully performed, and that the Performance Standards have been attained, Respondent shall so notify EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondent and EPA. The pre-

certification inspection shall be followed by a written Remedial Action Report submitted within 30 days of the inspection by a registered professional engineer and Respondent's Project Coordinator certifying that the Remedial Action has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the Remedial Action Report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with the Order, EPA shall notify Respondent in writing of the activities that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondent that the Remedial Action has been fully performed in accordance with this Order, EPA may notify Respondent that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondent's certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

B. Within 30 days after Respondent concludes that all phases of the Work have been fully performed, Respondents shall submit to EPA a written report, by a registered professional engineer,

certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work, or EPA may, based upon present knowledge and Respondent's certification to EPA, issue written notification to Respondent that the Work has been completed. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606 or 9607.

X. EPA PERIODIC REVIEW

Under Section 121(c) of CERCLA, 42 U.S.C. §9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Respondent shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under Section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondent may be required to perform additional response actions or to modify the Work previously performed.

XI. ADDITIONAL RESPONSE ACTIONS

A. EPA may determine that, in addition to the Work identified in this Order and attachments to this Order, additional response actions may be necessary to meet the Performance Standards or to protect human health and the environment. If EPA determines that additional response actions

are necessary, EPA will notify Respondent and may require Respondent to submit a work plan for such additional response actions. EPA may also require Respondent to modify any plan, design, or other deliverable required by this Order, including any approved modifications. Respondent shall notify EPA of its intent to perform such additional response actions within seven days after receipt of EPA's request for additional response actions.

B. Unless otherwise stated by EPA, not later than 30 days after receiving EPA's notice that additional response actions are required pursuant to this Section, Respondent shall submit a work plan for the additional response actions ("Additional Response Action Plan") to EPA for review and approval. The plan shall conform to the applicable requirements of Sections VIII (Work to be Performed), XV (Quality Assurance Sampling and Data Analysis), and XVI (Compliance with Applicable Laws) as appropriate. Upon approval by EPA, the Additional Response Action Plan shall be incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order as if fully set forth herein. Upon approval of the Additional Response Action Plan pursuant to the procedures set forth in Section XIII (EPA Review of Submissions), Respondent shall implement the Additional Response Action Plan according to the standards, specifications, and schedule in the approved Additional Response Action Plan.

XII. ENDANGERMENT AND EMERGENCY RESPONSE

A. In the event of any action or occurrence after the effective date of this Order which causes or threatens a release

of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or endangerment, and shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's alternative Project Coordinator. If neither of these persons is available, Respondent shall notify the EPA Region IV Hotline at (404) 347-4062. Respondent shall take such action in consultation with EPA's Project Coordinator and in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety/Contingency Plans developed pursuant to the SOW. In the event that Respondent fails to take appropriate response action as required by this Section, and EPA takes that action instead, EPA reserves the right to pursue reimbursement of all EPA's costs attributable to the response action that are not inconsistent with the NCP.

B. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order any appropriate action necessary to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XIII. EPA REVIEW OF SUBMISSIONS

A. Upon receipt of any plan, report, or other item which is required to be submitted for approval pursuant to this Order, EPA shall, in writing, either: (1) approve the submission; or (2) disapprove the submission, notifying Respondent of deficiencies.

If such submission is disapproved, EPA shall either: (1) notify Respondent that EPA will assume the responsibility for modifying the submission to correct the deficiencies, including, if necessary, the underlying Work; or (2) direct Respondent to modify the submission and, if necessary, the underlying Work, to correct the deficiencies.

B. In the event of approval or modification by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified.

C. Upon receipt of a written notice of disapproval and directive for modification, Respondent shall, within 30 days or such other time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval.

Notwithstanding the notice of disapproval, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

D. If, upon resubmission, the plan, report, or item is not approved, Respondent shall be deemed to be in violation of this Order.

The provisions of this Order shall govern all proceedings regarding the work performed pursuant to this Order. In the event of any inconsistency between this Order and any required deliverable submitted by Respondent, the inconsistency will be resolved in favor of this Order.

XIV. PROGRESS REPORTS

A. In addition to the deliverables set forth in this Order, Respondent shall submit written monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the 5th day of each month beginning 30 days following the effective date of this Order. Respondent's obligation to submit progress reports continues until EPA gives Respondent written notice that Respondent has demonstrated, to EPA's satisfaction, that all of the terms of this Order, including any additional tasks which EPA has determined to be necessary, have been completed. In addition, EPA may request periodic briefings by Respondent to discuss the progress of the Work.

B. At a minimum, these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondent and not previously submitted to EPA; (3) include all plans, reports, deliverables, and procedures completed under the work plans during the previous month; (4) describe all work planned for the next month with schedules relating such work to the overall project schedule for RA completion; and (5) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to mitigate or address any actual or anticipated problems or delays.

C. Upon the occurrence of any event during performance of the Work or additional response actions which, pursuant to

Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Respondent shall promptly orally notify the EPA Project Coordinator, or in the event of the unavailability of the EPA Project Coordinator, the EPA Region IV Hotline at (404) 347-4062, in addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. § 9603. Within ten days of the onset of such an event, Respondent shall furnish to the EPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Respondent shall submit a report setting forth all actions taken.

D. Respondent shall submit each year, within 30 days of the anniversary of the effective date of this Order, a summary report to EPA setting forth the status of the Work which shall at a minimum include a statement of tasks accomplished in the preceding year, a statement of tasks remaining to be accomplished, and provide a schedule for implementation of the remaining Work.

XV. QUALITY ASSURANCE SAMPLING AND DATA ANALYSIS

A. Respondent shall use the quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plan" (QAMS-005/80) and the "EPA Region IV, Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual" (U.S. EPA Region IV, Environmental Services Division, February 1, 1991), and subsequent amendments to such guidelines, while conducting all sample collection and

analysis activities required herein by any plan. Prior to the commencement of any monitoring project under this Order, Respondent shall submit for approval by EPA a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Respondent shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondent in implementing this Order.

B. Respondent shall make available to EPA the results of all sampling and/or tests or other data generated by Respondent with respect to the implementation of this Order, and shall submit these results in monthly progress reports as described in Section XIV (Progress Reports) of this Order.

C. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA, and/or their authorized representatives, of any samples collected by Respondent pursuant to the implementation of this Order. Respondent shall notify EPA not less than 14 days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

D. Respondent shall ensure that any laboratory utilized by Respondent for analyses participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. In addition, EPA may require Respondent to submit data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP) and may require laboratory analysis by Respondent of performance samples (blank and/or spike samples) in

sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901 et seq., and any other applicable statutes or regulations.

XVI. COMPLIANCE WITH APPLICABLE LAWS

A. All actions by Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable or relevant and appropriate laws, as required by CERCLA and the NCP. The United States has determined that the activities contemplated by this Order are consistent with the NCP.

B. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any portion of the Work requires a federal or state permit or approval under CERCLA and the NCP, Respondent shall submit on a timely basis applications and take all other actions necessary to obtain all such permits or approvals.

~~C. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.~~

D. Respondent shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by

such contracts or subcontracts in compliance with all applicable laws and regulations. Respondent shall provide a certification to the United States that such provision has been included in its contracts and subcontracts, within 15 days of final execution of contracts for Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring work.

XVII. PROJECT COORDINATOR

A. Within 15 days after the effective date of this Order, Respondent shall designate a Project Coordinator and shall submit the name, address, and telephone number of the Project Coordinator to EPA. Respondent's Project Coordinator shall be responsible for overseeing the implementation of this Order. If Respondent wishes to change its Project Coordinator, Respondent shall provide written notice to EPA, five days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator.

B. All communications, whether written or oral, from Respondent to EPA shall be directed to EPA's Project Coordinator or Alternate Project Coordinator who shall be a Remedial Project Manager (RPM) or On-Scene Coordinator (OSC). EPA's Project Coordinator is:

R. Bernard Hayes
Remedial Project Manager
United States Environmental Protection Agency
345 Courtland Street, NE
Atlanta, Georgia 30365
(404) 347-7791

EPA's Alternate-Project Coordinator is:

Jan Rogers, Chief
North Carolina / South Carolina Section
North Superfund Remedial Branch
United States Environmental Protection Agency
345 Courtland Street, NE
Atlanta, Georgia 30365
(404) 347-7791

C. EPA has the unreviewable right to change its Project Coordinator or Alternate Project Coordinator. If EPA changes its Project Coordinator or Alternate Project Coordinator, EPA will inform Respondent in writing of the name, address, and telephone number of the new Project Coordinator or Alternate Project Coordinator.

D. EPA's Project Coordinator and Alternative Project Coordinator shall have the authority lawfully vested in a RPM and OSC by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternative Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order and to take any necessary response action.

E. The absence of the EPA Project Coordinator from the Site shall not be cause for stoppage or delay of Work.

XVIII. SITE ACCESS

A. At all reasonable times from the effective date of this Order until EPA provides written notification that the Work has been completed pursuant to Section IX (Certification of Completion) of this Order, EPA and its authorized representatives and contractors shall have the authority to enter and freely move about all property at the Site and off-Site areas to which access

is required to implement this Order, including areas subject to or affected by the cleanup or where documents required to be prepared or maintained by this Order are located, to the extent access to the property is controlled by or available to Respondent. Access shall be allowed for the purposes of conducting any activity authorized by or related to this Order, including but not limited to: 1) inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its representatives or contractor pursuant to this Order; 2) reviewing the progress of Respondent in carrying out the terms of this Order; 3) conducting tests or inspections as EPA or its authorized representatives or contractors deem necessary to verify data or information submitted to EPA, take samples or investigate contamination at or near the Site; 4) assess the need for planning and implementing additional remedial or response activities at or near the Site; or 5) using a camera, sound recording device or other documentary-type equipment.

XIX. ACCESS TO SITE NOT OWNED BY RESPONDENT

A. If the Site, or the off-Site area that is to be used for access, or other property subject to or affected by the cleanup or where documents required to be prepared or maintained by this Order are located, is controlled or owned in whole or in part by parties other than Respondent, Respondent will obtain, or use its best efforts to obtain, access agreements from such parties within 30 days of the effective date of this Order. Such agreements shall provide access for EPA, its contractors and

oversight officials, the State and its contractors, and Respondent or Respondent's authorized representatives and contractors, and such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner.

B. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA in writing of its failure to obtain access. EPA may use its legal authorities to obtain access for Respondent, may perform those tasks or activities requiring access with EPA contractors, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities requiring access with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring such access, and shall be liable to EPA for reimbursement of all costs, including attorney fees, incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables. EPA reserves the right to seek cost recovery for all costs and attorney fees incurred by the United States to obtain access for Respondent.

C. Notwithstanding any provision of this Order, the United States retains all of its access authorities and rights under CERCLA and any other applicable statutes or regulations.

XX. ACCESS TO INFORMATION AND DATA/DOCUMENT AVAILABILITY

A. Respondent shall provide to EPA and its authorized representatives, upon request, access to inspect or copy all documents and information in its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including all files, records, documents, photographs, sampling and analysis records, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information relating to remedial activities and other Work required under the Order.

B. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, to the extent permitted by and in accordance with Section 104(e) (7) of CERCLA, 42 U.S.C. § 9604(e) (7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and shall be substantiated by Respondent at the time the assertion is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no claim of confidentiality accompanies specific documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e) (7) of CERCLA and 40 C.F.R. § 2.203(b), the public may be given access to such documents or information by EPA or the State without further notice to Respondent.

C. Respondent shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

D. Respondent shall maintain, for the period during which this Order is in effect, an index of documents that Respondent claims contain privileged information or confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondent shall submit a copy of the index to EPA.

XXI. RECORD PRESERVATION

A. Respondent shall provide to EPA, upon request, copies of all documents and information within, or which come within, their possession or control or the control of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work.

Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

B. Until EPA provides written notification that the Work has been completed pursuant to Section IX (Certification of Completion), Respondent shall preserve and retain, and shall instruct its contractors and agents to preserve and retain, all

documents, records, and information of whatever kind, nature, or description relating to the performance of the Work.

C. All records and documents in Respondent's possession at any time prior to termination of this Order that relate in any way to the Site shall be preserved and retained by Respondent for a minimum of ten years after EPA provides written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed. Respondent shall acquire and retain copies of all documents that relate to the Site and that are in the possession of its employees, agents, accountants, contractors, or attorneys. After this ten-year period, Respondent shall notify EPA at least 90 days before the documents are scheduled to be destroyed and, upon request of EPA, shall deliver said records or documents to EPA at no cost.

D. EPA has the discretion to request that all records and documents be retained for a longer period of time by Respondent.

E. Within 30 days after the effective date of this Order, Respondent shall submit a written certification to EPA's Project Coordinator that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site. Respondent shall not dispose of any such documents without prior approval by EPA. Respondent shall, upon

EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

XXII. DELAY IN PERFORMANCE

A. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this paragraph shall be considered a violation of this Order. No delay in performance of this Order shall affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

B. Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Order. Such notification shall be made by telephone to EPA's Project Coordinator or Alternate Project Coordinator within 48 hours after Respondent first knew or should have known that an event might cause a delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within five business days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, the reasons the delay is beyond the control of Respondent, any defenses under Section 106(b)(1), 42 U.S.C. § 9606(b)(1), available to Respondent for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Financial inability to perform the Work, increased costs or expenses associated with implementation of the activities required by this Order, or failure to attain the Performance

Standards shall not be considered circumstances beyond the control of Respondent.

XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK AND INSURANCE

A. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining, and presenting to EPA within 30 days of the effective date of this Order, one of the following: (1) a performance bond; (2) a letter or letters of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent have sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimated cost for the Remedial Design and Remedial Action contained in the Record of Decision for the Site. If Respondent seeks to demonstrate ability to complete the Work by means of internal financial information, or by guarantee of a third party, it shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such internal financial information is inadequate, Respondent shall, within 30 days after receipt of written notice of EPA's determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above. Respondent's lack of ability to demonstrate financial ability to complete any aspect of the Work shall not excuse compliance with this Order or any term thereof.

B. No later than ten days prior to commencing any Work at the Site pursuant to this Order, Respondent shall secure, and

shall maintain until the fifth anniversary of EPA's written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed, comprehensive general liability insurance with a combined single limit of at least five million dollars naming the United States as an additional insured. No later than 15 days after the effective date of this Order, Respondent shall secure, and shall maintain until the fifth anniversary of EPA's written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed, automobile liability insurance with limits of \$500,000 naming the United States as an additional insured. In addition, Respondent shall submit to EPA a certification that its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order. Prior to commencement of the Work under this Order, Respondent shall provide to EPA certificates of such insurance and copies of the insurance policies. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to matters so insured by that contractor or subcontractor, Respondent need provide only that portion of the

insurance described above which is not maintained by the contractor or subcontractor.

C. For the duration of this Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing work on behalf of Respondent in furtherance of this Order.

XXIV. REIMBURSEMENT OF RESPONSE COSTS

A. EPA reserves the right to demand that Respondent reimburse EPA for all response costs incurred by the United States including those costs incurred in overseeing Respondent's implementation of the requirements of this Order or in performing any response action which Respondent fail to perform pursuant to this Order. EPA may submit to Respondent, on a periodic basis, an accounting of all response costs incurred by the United States with respect to this Order. Response costs may include, but are not limited to, costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order and in performing activities as part of the RD/RA and community relations, including any costs incurred while obtaining access for Respondent. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RD/RA activities, Site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or

disapproval of reports, and costs of performing any Work which Respondent failed to perform pursuant to this Order. EPA's certified Agency Financial Management System summary data (SPUR Reports), or such other data summary as certified by EPA, shall serve as the basis for payment demands.

B. EPA's demand for payment shall request that Respondent, within 30 days of receipt of each EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the latter of the date that payment of a specified amount is demanded in writing, or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

C. Checks shall be made payable to "EPA Hazardous Substances Superfund" and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

EPA-REGION IV
Attn: Superfund Accounting
P.O. Box 100142
Atlanta, GA 30384

D. Respondent shall send copies of each check and transmittal letter to EPA's Project Coordinator.

XXV. UNITED STATES NOT LIABLE

The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action

or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXVI. ENFORCEMENT AND RESERVATIONS

A. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any past or future response costs incurred by the United States related to the Site and not previously reimbursed by Respondent. This reservation shall include but not be limited to past costs, indirect costs, the cost of oversight, costs for compiling the cost documentation to support an oversight cost demand, as well as accrual of interest as provided in Section 107(a) of CERCLA.

B. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

C. Nothing herein shall preclude EPA from continuing any existing enforcement actions and/or taking any additional enforcement actions, including modification of this Order or issuance of additional orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities

pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq. or any other applicable law, or from seeking judicial enforcement of this Order. Respondent shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

D. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA and any other applicable statutes and regulations.

E. Respondent shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$25,000 for each day in which a violation of this Order occurs or such failure to comply continues. Failure to comply with this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of, any costs incurred by the Fund (as defined in CERCLA) as a result of such failure to take proper action.

F. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, subsidiary or corporation for any liability it may have arising out of or relating in any way to the Site.

XXVII. ADMINISTRATIVE RECORD

Upon request by EPA, Respondent must submit to EPA all documents related to the selection of the response action for possible inclusion in the administrative record file.

XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME

This Order shall be effective 15 days after this Order is signed by the Director of the Waste Management Division, EPA Region IV. All times for performance of ordered activities shall be calculated from this effective date. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the next working day.

XXIX. OPPORTUNITY TO CONFER

A. Respondent may, within five days after this Order is signed by the Director of the Waste Management Division, EPA Region IV, make a written or oral request for a conference with EPA Region IV to discuss this Order. If requested, the conference shall occur at 345 Courtland Street, Atlanta, GA 30365. All telephone communications regarding a conference should be directed to Richard Glaze, Jr. at (404) 347-2641, ext. 2288, or to R. Bernard Hayes at (404) 347-7791. The written request for a conference may be delivered to EPA by some means of personal delivery other than certified mail.

B. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary

hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, nor to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representatives.

XXX. NOTICE OF INTENT TO COMPLY

Respondent shall provide, not later than five days after the effective date of this Order, written or verbal notice to EPA stating unequivocally whether it will comply with the terms of this Order. Any verbal notice must be confirmed in writing within two days of the giving of such verbal notice. A written notice of intent (or written confirmation, as the case may be) may be delivered to EPA by some means of personal delivery other than certified mail. If Respondent does not provide notice within five days as specified above, or if Respondent provides notice which does not state unequivocally that Respondent will comply with the terms of this Order, then Respondent shall be deemed to have failed and refused to comply with this Order and to have violated this Order. The written notice or written confirmation required by this paragraph shall set forth, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of Respondent's assertions.

XXXI. MODIFICATION

No material modifications shall be made to this Order without written notification to and written approval of EPA. The notification required by this Section shall set forth the nature of and reasons for the requested modification. No oral modification of this Order shall be effective. Modifications that do not materially alter the requirements of this Order, such as minor schedule changes, may be made upon the written approval of EPA. Nothing in this paragraph shall be deemed to alter EPA's authority to supervise and modify this Order.

So Ordered, this 25th day of May, 1994.

BY:

Joseph R. Franzmathes
Director, Waste Management Division
Region IV
U.S. Environmental Protection Agency

APPENDICES

- Appendix 1 Record of Decision
- Appendix 2 Scope of Work
- Appendix 3 Site Map